

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CASEY JAMES WEBB,
Plaintiff,

v.

YUBA COUNTY JAIL MEDICAL
DEPARTMENT, et al.,
Defendants.

No. 2:22-cv-02183-CKD P

ORDER

Plaintiff is a former county inmate proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account.

1 These payments will be forwarded by the appropriate agency to the Clerk of the Court each time
 2 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.
 3 § 1915(b)(2).

4 **I. Screening Requirement**

5 The court is required to screen complaints brought by prisoners seeking relief against a
 6 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
 7 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
 8 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek
 9 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

10 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
 11 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
 12 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
 13 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
 14 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
 15 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
 16 Cir. 1989); Franklin, 745 F.2d at 1227.

17 A complaint, or portion thereof, should only be dismissed for failure to state a claim upon
 18 which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in
 19 support of the claim or claims that would entitle him to relief. Hishon v. King & Spalding, 467
 20 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer v. Roosevelt
 21 Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under
 22 this standard, the court must accept as true the allegations of the complaint in question, Hosp.
 23 Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light
 24 most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor, Jenkins v.
 25 McKeithen, 395 U.S. 411, 421 (1969).

26 **II. Allegations in the Complaint**

27 At all times relevant to the allegations in the complaint, plaintiff was an inmate at the
 28 Yuba County Jail. He sues two members of the medical staff, a correctional officer at the jail,

1 and the Yuba County Medical Department in this action.

2 On multiple occasions between August 22, 2022 and August 31, 2022, plaintiff was
3 sexually assaulted by medical staff at the Yuba County jail who inappropriately touched his
4 genitalia for his medical condition involving a hernia. ECF No. 1 at 3. Plaintiff alleges that this
5 touching of his genitalia made his medical condition worse to the point where he required
6 surgery. ECF No. 1 at 3.

7 **III. Legal Standards**

8 The following legal standards are provided based on plaintiff's pro se status as well as the
9 nature of the allegations in the complaint.

10 **A. Linkage**

11 The civil rights statute requires that there be an actual connection or link between the
12 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
13 Monell v. Department of Social Services, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
14 (1976). The Ninth Circuit has held that "[a] person 'subjects' another to the deprivation of a
15 constitutional right, within the meaning of section 1983, if he does an affirmative act, participates
16 in another's affirmative acts or omits to perform an act which he is legally required to do that
17 causes the deprivation of which complaint is made." Johnson v. Duffy, 588 F.2d 740, 743 (9th
18 Cir. 1978) (citation omitted). In order to state a claim for relief under section 1983, plaintiff must
19 link each named defendant with some affirmative act or omission that demonstrates a violation of
20 plaintiff's federal rights.

21 **B. Eighth Amendment**

22 The Eighth Amendment prohibits cruel and unusual punishment. "[T]he unnecessary and
23 wanton infliction of pain ... constitutes cruel and unusual punishment forbidden by the Eighth
24 Amendment." Whitely v. Albers, 475 U.S. 312, 319 (1986). "The Eighth Amendment's
25 prohibition of cruel and unusual punishments necessarily excludes from constitutional recognition
26 de minimis uses of physical force, provided that the use of force is not of a sort repugnant to the
27 conscience of mankind." Wilkins v. Gaddy, 559 U.S. 34, 37-38 (2010) (quoting Hudson v.
28 McMillian, 503 U.S. 1, 9, (1992)) (internal quotations omitted).

1 However, not every malevolent touch by a prison guard gives rise to a federal cause of
 2 action. Wilkins, 559 U.S. at 37 (quoting Hudson, 503 U.S. at 9) (quotation marks omitted). In
 3 determining whether the use of force was wanton and unnecessary, courts may evaluate the extent
 4 of the prisoner's injury, the need for application of force, the relationship between that need and
 5 the amount of force used, the threat reasonably perceived by the responsible officials, and any
 6 efforts made to temper the severity of a forceful response. Hudson, 503 U.S. at 7 (quotation
 7 marks and citations omitted). While the absence of a serious injury is relevant to the Eighth
 8 Amendment inquiry, it does not end it. Hudson, 503 U.S. at 7. The malicious and sadistic use of
 9 force to cause harm always violates contemporary standards of decency. Wilkins, 559 U.S. at 37
 10 (quoting Hudson, 503 U.S. at 9) (quotation marks omitted). Thus, it is the use of force rather than
 11 the resulting injury which ultimately counts. Id. at 1178.

12 **C. Sexual Assault**

13 Prisoner sexual assault claims fall within the same legal framework as excessive force
 14 claims. While “the Ninth Circuit has recognized that sexual harassment may constitute a
 15 cognizable claim for an Eighth Amendment violation, the Court has specifically differentiated
 16 between sexual harassment that involves verbal abuse and that which involves allegations of
 17 physical assault, finding the lat[t]er to be in violation of the constitution.” Minifield v. Butikofer,
 18 298 F. Supp. 2d 900, 904 (N.D. Cal. 2004) (citation omitted).

19 **IV. Analysis**

20 The court finds the allegations in plaintiff’s complaint so vague and conclusory that it is
 21 unable to determine whether the current action is frivolous or fails to state a claim for relief.
 22 Plaintiff does not link any defendant to any particular action alleged in the complaint. Plaintiff
 23 must allege with at least some degree of particularity overt acts which defendants engaged in that
 24 support plaintiff’s claim. See Rizzo v. Goode, 423 U.S. 362 (1976). For these reasons, the
 25 complaint must be dismissed. The court will, however, grant leave to file an amended complaint.

26 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
 27 complained of have resulted in a deprivation of plaintiff’s constitutional rights. See Ellis v.
 28 Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms how

each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant's actions and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory allegations of official participation in civil rights violations are not sufficient. Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to make plaintiff's amended complaint complete. Local Rule 220 requires that an amended complaint be complete in itself without reference to any prior pleading. This is because, as a general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an original complaint, each claim and the involvement of each defendant must be sufficiently alleged.

V. Plain Language Summary for Pro Se Party

The following information is meant to explain this order in plain English and is not intended as legal advice.

The court has reviewed the allegations in your complaint and determined that they do not state any claim against the defendants because you do not identify which defendant(s) was responsible for the alleged constitutional violation. Your complaint is being dismissed, but you are being given the chance to fix the problems identified in this screening order.

Although you are not required to do so, you may file an amended complaint within 30 days from the date of this order. If you choose to file an amended complaint, pay particular attention to the legal standards identified in this order which may apply to your claims.

In accordance with the above, IT IS HEREBY ORDERED that:

1. Plaintiff's motion for leave to proceed in forma pauperis (ECF No. 2) is granted.
2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the

Director of the California Department of Corrections and Rehabilitation filed concurrently herewith.

3. Plaintiff's complaint is dismissed.

4. Plaintiff is granted thirty days from the date of service of this order to file an amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the docket number assigned this case and must be labeled "Amended Complaint"; plaintiff must file an original and two copies of the amended complaint; failure to file an amended complaint in accordance with this order will result in a recommendation that this action be dismissed.

Dated: May 24, 2023



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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